

### REMARKS

The Office Action of April 15, 2009 has been received and carefully reviewed. It is submitted that, by this Amendment, all bases of rejection are traversed and overcome. Upon entry of this Amendment, claims 10-12 and 14 remain in the application. Claim 13 is cancelled herein. Reconsideration of the claims is respectfully requested.

Claims 10-14 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. More specifically, the Examiner states that Applicants' specification and drawings do not disclose that the tube forms the gorge. The Examiner concludes that claim 10, and the claims depending therefrom, contain subject matter that was not described in the specification in a way to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicants do not acquiesce to the Examiner's instant rejection. However, in order to expedite prosecution, claim 10 has been amended to remove the recitation of the gorge from the claim. Claim 10 now recites that "the plurality of tubes passes through the plurality of slots and maintains the tank foot in place." Support for this new recitation may be found throughout Applicants' application as filed, at least at page 10, lines 15-21 and in Figs. 7 and 8. Applicants therefore submit that the instant 35 U.S.C. § 112, first paragraph rejection of claims 10-14 has been obviated in view of the foregoing amendment to claim 10, and withdrawal of the rejection is respectfully requested.

Claims 10-14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite and as being incomplete for omitting essential steps, where such omission amounts to a gap between claimed elements. More specifically, the Examiner states that other elements used to define the gorge are missing from claim 10. In light of the fact that the gorge has been removed from claim 10 (as indicated above), Applicants submit that the instant 35 U.S.C. § 112, second paragraph, rejection is moot, and withdrawal of the rejection is also respectfully requested.

Claim 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by Puntambekar, et al. (U.S. Patent No. 5,195,581). The Examiner continues to assert that Putambekar discloses all of the elements of independent claim 10.

Although Applicants do not acquiesce to the Examiner's assertion, in order to expedite prosecution, independent claim 10 has been amended to include, in relevant part:

\* \* \*

a plurality of tubes extending from the heat exchanger body part;

a header pan disposed at an end of the plurality of tubes, wherein the header pan i) includes a plurality of slots for receiving the plurality of tubes, ii) is a flat pan, and iii) defines a plurality of collars, each of the plurality of collars forming a ferrule surrounding and in contact with a respective one of the plurality of tubes;

\* \* \*

wherein:

each slot of the plurality of slots is formed with a respective one of the plurality of collars to accept a respective one of the plurality of tubes;

the plurality of tubes pass through the plurality of slots and maintain the tank foot in place; and

the plurality of collars is inverted in relation to a line of extension of the plurality of tubes. (Emphasis added.)

Support for the new recitations (identified by the italics in claim 10 above) may be found throughout Applicants' application as filed, at least at page 5, lines 16-19 and page 10, lines 17-21; in Figs. 3b, 7, 8, and 9b; and in claim 13 as originally filed. Claim 13 has been canceled herein in light of the amendments to claim 10. Further, claim 11 has been amended in order to conform to newly amended claim 10.

Amended claim 10 recites that the header pan is a **flat pan**. Such is shown, for example, in Fig. 8 of Applicants' application as originally filed (reproduced below for the Examiner's convenience). As shown in Fig. 8, the header pan includes a flat medallion 22 (i.e., plate collector). Thus, the header pan is a flat pan (as identified in Fig. 8 below with the label "Flat pan").

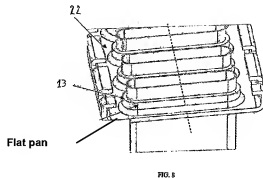


Fig. 8 of U.S. Ser. No. 10/582,735

In sharp contrast, Putambekar discloses a header 20 having two sides 26, 28, each bent to define *cavity portions* 30, 32 (see column 2, lines 56-59 and Fig. 5 of Putambekar). Fig. 5 of Putambekar is reproduced hereinbelow.

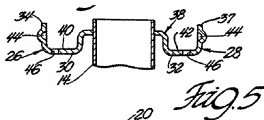


Fig. 5 of Putambekar

Applicants submit that the cavity portions 30, 32 formed in the header 20 of Putambekar clearly do *not* render the header 20 to be a **flat pan**.

Additionally, amended claim 10 recites that the header pan defines a plurality of collars, each forming a ferrule surrounding and **in contact with** a respective one of the plurality of tubes. Such is shown, for example, in Fig. 7 of Applicants' originally filed application, and is reproduced hereinbelow for the Examiner's convenience. As shown in Fig. 7, each collar (identified by reference numeral 13)

clearly surrounds and is in contact with a respective tube (identified by reference numeral 10).

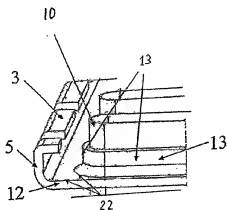
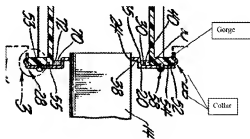


FIG. 7

Fig. 7 of U.S. Ser. No. 10/582,735

The instant non-final Office Action refers to the drawing included in the Final Office Action dated October 28, 2008. This figure is also reproduced hereinbelow. The figure is self-labeled, by the Examiner, identifying the collar. Although the self-labeled collar potentially surrounds the tube or slot, it is submitted that the self-labeled collar is clearly *not* in **contact with** the tube. In other words, the self-labeled collar does *not* touch or have intimate contact with the tube inserted through the slot.



Examiner's self-labeled drawing from the Final Office Action dated October 28, 2008

Furthermore, Applicants submit the Putambekar does *not* disclose that a collar surrounds each tube. At most, it appears (at least from Fig. 4 of Putambekar) that a single collar is used that surrounds all of the tubes together; not individually (in sharp contrast to amended claim 10).

For all the reasons stated above, it is submitted that Putambekar *fails* to disclose all of the elements of amended claim 10. As such, it is further submitted that Applicants' invention as defined in independent claim 10, and in those claims depending ultimately therefrom, is not anticipated, taught or rendered obvious by Putambekar, either alone or in combination, and patentably defines over the art of record.

Claims 11-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Putambekar.

At the outset, Applicants submit that the instant rejection to claim 13 is moot in light of canceling the claim.

Further, for all of the reasons stated above, it is submitted that Putambekar *fails* to anticipate independent claim 10, from which claims 11, 12, and 14 depend. Since Putambekar does not render Applicants' invention as defined in claim 10, Applicants submit that claims 11, 12, and 14 are patentable at least because of their dependency from claim 10. As such, it is submitted that Applicants' invention as defined in claims 11, 12 and 14 is not anticipated, taught, or rendered obvious by Putambekar, either alone or in combination, and patentably defines over the art of record.

It is submitted that the absence of a reply to a specific rejection, issue or comment in the instant Office Action does not signify agreement with or concession of that rejection, issue or comment. Finally, nothing in this amendment/response should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this amendment/response, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In summary, claims 10-12 and 14 remain in the application. It is submitted that, through this Amendment, Applicants' invention as set forth in these claims is now in a condition suitable for allowance.

Further and favorable consideration is requested. If the Examiner believes it would expedite prosecution of the above-identified application, the Examiner is cordially invited to contact Applicants' Attorney at the below-listed telephone number.

Respectfully submitted,

DIERKER & ASSOCIATES, P.C.

/Julia Church Dierker/

Julia Church Dierker  
Attorney for Applicants  
Registration No. 33368  
(248) 649-9900, ext. 25  
juliad@troypatent.com

3331 West Big Beaver Rd., Suite 109  
Troy, Michigan 48064-2813  
Dated: August 14, 2009  
JCD/AMS